



Dora
Department of Regulatory Agencies

**MARKET CONDUCT EXAMINATION REPORT
AS OF DECEMBER 31, 2008**

LEXINGTON NATIONAL INSURANCE CORPORATION

**200 East Lexington Street, Suite 501
Baltimore, Maryland 21202**

**NAIC Company Code 37940
NAIC Group Code N/A**



CONDUCTED BY:

COLORADO DIVISION OF INSURANCE

LEXINGTON NATIONAL INSURANCE CORPORATION
200 East Lexington Street, Suite 501
Baltimore, Maryland 21202

TARGETED MARKET CONDUCT
EXAMINATION REPORT
as of
December 31, 2008

Examination Performed by:

Regulatory Consultants, Inc.

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Examiner-In-Charge

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And

Canvasback Investigations, LLC

July 14, 2010

The Honorable Marcy Morrison
Commissioner of Insurance
State of Colorado
1560 Broadway, Suite 850
Denver, Colorado 80202

Commissioner Morrison:

This targeted market conduct examination of Lexington National Insurance Corporation (the “Company”) was conducted pursuant to §§ 10-1-203, 10-1-204, 12-7-108(6) and 12-7-113, C.R.S., which authorize the Insurance Commissioner to examine insurance companies and bail bonding agents. We examined the Company’s records as provided by the Company and its agents. Company records were provided via email, CD or facsimile, and delivered to the examiners by the Company. Agent records were collected at individual bail agents’ offices. The market conduct examination covered the period from January 1, 2008, through December 31, 2008.

The following market conduct examiners respectfully submit the results of the examination.

Nestor J. Romero, CPA, CFE, CIE

Jimmy Potts, FLMI, CLU, AIRC, CIE

Charlotte Howell, CIE

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COMPANY PROFILE

The following profile is based on information provided by the Company and from other sources:

Lexington National Insurance Corporation (the “Company” or “LNIC”) was incorporated in Maryland on October 23, 1989. It received its Certificate of Authority from the State of Colorado on April 28, 1997, to operate as a casualty insurance company to write bail bonds. The Company commenced operations in October 1997, and issued its first bail bond on November 8, 1997.

The Company is domiciled in Maryland and is not part of a holding company structure. LNIC is licensed in forty-five (45) states, and also has a Certificate of Authority from the United States Department of the Treasury. The Company primarily underwrites criminal bail bonds.

Based upon figures reported to the Colorado Division of Insurance (the “Division”), the Company had \$2,425,551.00 in total taxable bail premium during 2008.

A.M. Best has currently assigned a Financial Strength Rating of NR-1(Insufficient Data) to the Company.

PURPOSE AND SCOPE

Independent contract examiners for the Division, in accordance with Colorado insurance laws, §§ 10-1-201, 10-1-203, 10-1-204, 10-1-205(8), 10-3-1106, 12-7-108(6), and 12-7-113, C.R.S., which empower the Commissioner to examine any entity or bail agent engaged in the insurance business, reviewed certain business practices of the Company. The findings in this report, including all work products developed in producing it, are the sole property of the Division.

The purpose of the targeted examination was to determine the Company's compliance with Colorado insurance laws related to bail bond business in Colorado. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record.

Examiners conducted the examination in accordance with procedures developed by the Division, based on model procedures developed by the National Association of Insurance Commissioners. They relied primarily on records and materials maintained and/or supplied by the Company and its agents. The targeted market conduct examination covered the period from January 1, 2008, through December 31, 2008.

The examination included review of the following:

- Company Operations and Management
- Advertising, Marketing and Sales
- Complaint Handling
- Producers/Agents
- Contract Forms
- Rates
- New Business Underwriting: Applications, Cancellations and Declinations
- Claim Handling, to include Bail Bond Forfeiture Judgments and Return of Collateral

The final examination report is a report written by exception. References to additional practices, procedures, or files that did not contain improprieties were omitted. Based on review of these areas, comment forms were prepared for the Company identifying any concerns and/or discrepancies. The comment forms contain a section that permits the Company to submit a written response to the examiners' comments.

For the period under examination, the examiners included statutory citations and regulatory references related to bail bond insurance laws as they pertained to insurance companies and producers. Examination findings may result in administrative action by the Division. Examiners may not have discovered all unacceptable or non-complying practices of the Company. Failure to identify specific Company practices does not constitute acceptance of such practices. This report should not be construed to either endorse or discredit any insurance company or insurance company product.

METHODOLOGY

The examiners reviewed the Company's business practices to determine compliance with Colorado insurance laws. For this examination, special emphasis was given to the statutes and regulations as shown in Exhibit 1.

Exhibit 1

Statute or Regulation	Subject
Section 10-1-128, C.R.S.	Fraudulent insurance acts - immunity for furnishing information relating to suspected insurance fraud - legislative declaration.
Section 10-2-407, C.R.S.	License – definitions of lines of insurance – authority.
Section 10-2-415.5, C.R.S.	Appointment of insurance producer bail bonding agent – continuation – renewal – exceptions.
Section 10-2-415.7, C.R.S.	Termination of insurance producer bail bonding agent – notice – penalty.
Section 10-2-416, C.R.S.	Notification to the commissioner of termination.
Section 10-2-701, C.R.S.	Assumed names – registration – rules.
Section 10-2-702, C.R.S.	Commissions.
Section 10-2-704, C.R.S.	Fiduciary Responsibilities
Section 10-3-209, C.R.S.	Tax on premium collected – exemptions – penalties.
Section 10-3-1104, C.R.S.	Unfair methods of competition and unfair or deceptive acts or practices.
Section 12-7-101, C.R.S.	Definitions.
Section 12-7-102, C.R.S.	License required – qualifications – enforcement.
Section 12-7-102.5, C.R.S.	Prelicensure education requirements – exemptions.
Section 12-7-103, C.R.S.	License requirements – application – qualification bond – forfeiture.
Section 12-7-104.5, C.R.S.	Advisory committee – repeal.
Section 12-7-105, C.R.S.	Reports and records required – bonding agents – division.
Section 12-7-105.5, C.R.S.	Bail recovery services – requirements.
Section 12-7-106, C.R.S.	Denial, suspension, revocation, and refusal to renew license – hearing – alternative civil penalty.
Section 12-7-107, C.R.S.	Notice to surety.
Section 12-7-108, C.R.S.	Bonding agreement – place of business – records – payment schedule – disclosure statements.
Section 12-7-109, C.R.S.	Prohibited activities – penalties.
Section 12-7-110.5, C.R.S.	Rate filing – rules.
Section 12-7-111, C.R.S.	Tax on fees charged.
Section 12-7-112, C.R.S.	Repeal – review of functions.
Section 12-7-113, C.R.S.	Insurance laws – applicability.
Section 16-4-104, C.R.S.	Bail bond - alternatives.
Insurance Regulation 1-1-7	Market Conduct Record Retention
Insurance Regulation 1-1-8	Penalties and Timelines Concerning Division Inquiries and Document Request
Insurance Regulation 1-2-1	Concerning Agent Fiduciary Responsibility
Insurance Regulation 1-2-10	Concerning The Regulation of Insurance Producers By The Colorado Division of Insurance: Colorado Producer Licensing Model Act
Insurance Regulation 1-2-11	Standards for Surety Bail Bonding Agent and Professional Cash Bail Agent Prelicensure Education Requirements
Insurance Regulation 1-2-14	Concerning Bail Bonding Agent Record Keeping, Reporting Requirements and Daily Bond Register
Insurance Regulation 1-2-15	Bail Bond Premium Rate Filing Requirements
Insurance Regulation 1-2-16	Bail Bonding Agent Appointment and Termination Requirements for Surety Companies

Sampling Methodology

The examiners selected all files, where a sample of a larger population was taken, on random sample basis in accordance with the sampling methodology and sample sizes as set forth in the 2009 *NAIC Market Regulation Handbook*. These random samples consisted of six (6) unique populations, one (1) sample for each of the top five (5) agents based on the penal value of bonds posted, and one (1) combined sample for all other agents. The Company, through its agents, was unable to produce twenty-three (23) files from the original samples. The twenty-three (23) files were replaced with files from a supplemental sample selected on a random basis from the applicable populations to which the missing files belonged. An additional five (5) random agent files were selected at each agent's office visited.

Where the error rates of the samples could indicate that it would be appropriate to select an additional sample but the initial results were conclusive, the Company was afforded the opportunity to agree that the initial sample was appropriate or request that an additional sample be selected. In each case the Company indicated that the initial sample was appropriate.

When sampling was involved, a minimum error tolerance level of seven percent (7%) for claims, and ten percent (10%) for other samples, was established to determine reportable exceptions. However, if an issue appeared to be systemic, or when due to the sampling process it was not feasible to establish an exception percentage, a minimum error tolerance level was not utilized. Also, if more than one sample was reviewed in a particular area of the examination and if one or more of the samples yielded an exception rate higher than the minimum tolerance level, the results of any other samples with exception percentages less than the minimum tolerance were also included.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero dollar (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero dollar (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

Audits and Examinations

The Company was the subject of a financial condition examination by the Maryland Insurance Administration as of December 31, 2006 covering a five year period from January 1, 2002 and which was made public during 2008. The Company was the subject of a previous Colorado market conduct examination that was completed in July 2003, and covered calendar year 2002. According to information provided by the Company, no state has performed a Market Conduct examination of the Company in the prior three (3) years.

Company Operations and Management

The examiners reviewed Company management and administrative controls, the Certificate of Authority, record retention, underwriting guidelines, and timely cooperation with the examination process. Also reviewed by the examiners were the Company's disaster recovery plan and its anti-fraud plan's implementation and associated procedures.

Advertising, Marketing and Sales

The Company was asked to describe the internal review process used to ensure all advertising and sales materials comply with Colorado insurance law.

The examiners reviewed the Company's advertising procedures. The Company did not produce any consumer advertising for bail bond business. The examiners reviewed bail bond agent's websites and did not identify any instances where the agent included the Company's name.

Complaint Handling

The Company was asked to make available a copy of its complaint handling guidelines and/or procedures along with a listing of all complaints filed with the Company during the examination period. This listing/register was to include complaints received from the Division as well as complaints made directly to the Company on behalf of consumers regarding bail bond issues regardless of whether or not it was reported to the Division.

Producers/Agents

The Company provided a listing of sixty (60) bail bonds agents that were active during the examination period. The examiners selected all sixty (60) agents to review for agent contracting, licensing and appointment.

Out of the population of sixty (60) active bail bond agents, the examiners randomly selected 686 files, which included records from twenty-nine (29) producers for review. Producers with files in the sample of 686 files were required to provide access to the files for review, and were interviewed by the Canvasback investigators during the agent's office visits in reference to their practices related to fiduciary treatment of funds.

Contract Forms

The Company provided specimen copies of forms made available for use by its bail bond agents in Colorado. The examiners reviewed each of the provided forms as listed below:

<u>FORM NAME</u>	<u>FORM NUMBER</u>
Collateral Receipt	No Form Number
Bail Bond Application	No Form Number
Deed of Trust	No Form Number
Contingent Promissory Note	No Form Number
Bail Bond Premium Receipt	No Form Number

Rates

The Company provided copies of its most recent rate filings which were filed effective October 1, 2007 and October 1, 2008. The examiners reviewed actual rates being charged to Colorado residents during the file review process set forth in the New Business section.

New Business

The examiners selected a random sample of 686 files from a total population of 7,815 powers-of-attorney executed by the Company's bail bond agents to guarantee bail bonds posted during 2008. The samples consisted of six (6) unique populations, one (1) sample for each of the top five (5) agents based on the penal value of bonds posted, and one (1) combined sample for all other agents. The Company, through its agents, was unable to produce twenty-three (23) files from the original samples. The twenty-three (23) files were replaced with files selected on a random basis from a supplemental sample for each of the applicable populations to which the missing files belonged. The total of 686 files included five (5) additional random sample files that were selected at each agent's office visited by the investigators.

Claim Handling

The Company provided a list of sixteen (16) bail bond forfeitures paid during the examination period. The examiners note that the bail bond forfeitures were paid either by the bail bond agent, the supervising bail bond agent, or by the Company using funds in the bail bond agent's build-up fund account. Review of the timely return of collateral as required by Colorado law was conducted as part of the file sample review.

EXAMINATION REPORT SUMMARY

The examination resulted in a total of seventeen (17) findings in which the Company did not appear to be in compliance with Colorado statutes and regulations. The following is a summary of the examiners' findings.

Company Operations and Management: The examiners identified one (1) area of concern in their review of the Company's Operations and Management:

Issue A1: Failure, in some instances, to maintain records required for market conduct purposes.
(This appears to be a repeat of prior issue H in the findings of the market conduct examination report for 2002.)

Advertising, Marketing and Sales: In the area of Advertising, Marketing and Sales, no compliance issues are addressed in this report.

Complaint Handling: The examiners identified one (1) area of concern in their review of complaints received directly from consumers or on behalf of consumers regarding bail bond issues or those complaints referred by the Division of Insurance.

Issue C1: Failure to establish appropriate procedures to maintain a complete complaint log.

Producers/Agents: The examiners identified two (2) areas of concern in their review of the licensing and appointment, commission schedule and contracting of the Company's agents and sub-agents.

Issue D1: Failure, in some instances, to appropriately contract with producers.

Issue D2: Failure to require that bail bonding agents provide a list of all collateral taken to the insurer within twenty (20) days.

Contract Forms: The examiners identified four (4) areas of concern during the review of the Company's contract forms.

Issue E1: Failure to include all required information on the collateral receipt.

Issue E2: Failure to provide a signature line for the bail bonding agent on the promissory note.

Issue E3: Failure to include all required information on its executed/indemnity agreement.

Issue E4: Failure to set forth the terms of release of money or other consideration on the premium receipt.

Rates: The examiners identified one (1) area of concern during the review of Rates:

Issue F1: Failure to establish underwriting criteria to support the premium charged and to apply such criteria uniformly across all underwritten risk.

New Business: The examiners identified eight (8) areas of concern during the review of New Business:

Issue G1: Failure, in some instances, to include all required information on the executed/indemnity agreements.

Issue G2: Failure, in some instances, to include the signature of the bail bonding agent on promissory notes.

Issue G3: Failure, in some instances, to notify the defendant or third-party indemnitor that the promissory notes received had been satisfied.

Issue G4: Failure, in some instances, to include all required information on the premium receipts that were issued by the agents.

Issue G5: Failure, in some instances, to enter and/or to enter in sequential order, the premium and collateral receipt numbers on the daily bond register.

Issue G6: Failure, in some instances, to include all required information on the Disclosure Statement as required in the format prescribed by the Commissioner.

Issue G7: Failure, in some instances, to provide property owners with a written disclosure statement at the time of application of the lien against real property.

Issue G8: Failure, in some instances, to include on all applications a permanently affixed statement regarding fraudulent acts and penalties. *(This appears to be a repeat of prior issue D in the findings of the market conduct examination report of 2002.)*

A copy of the Company's official response to this final Market Conduct Report, if applicable, can be obtained upon request from the Division.

Results of previous market conduct examinations are available on the Division's website at www.dora.state.co.us/insurance or by contacting the Division.

LEXINGTON NATIONAL INSURANCE CORPORATION

FACTUAL FINDINGS

COMPANY OPERATIONS AND MANAGEMENT

Issue A1: Failure, in some instances, to maintain records required for market conduct purposes. *(This appears to be a repeat of prior issue H in the findings of the market conduct examination report for 2002.)*

Section 12-7-108 C.R.S., Bonding agreement - place of business - records - payment schedule - disclosure statements, states in part:

...

- (4) *Each bail bonding agent who accepts money or any other consideration for a bond or undertaking shall, for each payment received, give to each indemnitor a prenumbered, signed receipt as evidence of payment. The prenumbered, signed receipt shall state the date, the name of the defendant, a description of the consideration or amount of money received and the purpose for which it was received, the number of any applicable power-of-attorney form attached to the bond, the penal sum of the bond, the name of the indemnitor, and the terms under which the money or other consideration shall be released. Each bail bonding agent shall retain a duplicate copy of each receipt issued as part of the agent's records and shall account for all of the prenumbered receipts whether they were issued to an indemnitor or destroyed or otherwise not used by the agent.*
- (5) *The bail bonding agent shall keep at the place of his or her business or, if using an agent for service of process required pursuant to subsection (2) of this section, shall make available at the business of the agent for service of process all records pertaining to transactions made under the agent's license and shall keep all the records as to any particular transaction available and open to inspection by the commissioner or the commissioner's authorized representative during normal business hours for the three years immediately after the date of release of the bond and return of the collateral, if applicable, or proof of notice to the defendant or third-party indemnitor that the terms of any promissory note have been satisfied. Such records include, without limitation:*
 - (a) *Records of all bail bonds the bail bonding agent executes or countersigns;*
 - (b) *Copies of any receipts issued to the indemnitor who pays the money for the premium and the collateral agreement, signed by a licensed bail bonding agent;*
 - (c) *An executed agreement, signed by the indemnitor and a licensed bail bonding agent, setting forth the amount of bail set in the case, the name of the defendant released on the bond, the court case number, if available, and the court in which the bond is executed, the premium charged, the amount and type of collateral held by the bail bonding agent, and the conditions under which the collateral will be returned;*
 - (d) *Evidence that the indemnitor has received copies of signed and dated disclosure forms as required by subsection (9) of this section; and*
 - (e) *Any additional information the commissioner may reasonably require by rule. [Emphasis added]*

authority of § 10-1-109(1), C.R.S., states in part:

Section 4. Records Required For Market Conduct Purposes

- A. *Every entity subject to the Market Conduct process shall maintain its books, records, documents and other business records in a manner so that the following practices of the entity subject to the Market Conduct process may be readily ascertained during market conduct examinations, including but limited to, company operations and management, policyholder services, claim's practices, rating underwriting, marketing, complaint/grievance handling, producer licensing records, and additionally for health insurers/carriers or related entities: network adequacy, utilization review, quality, assessment and improvement, and provider credentialing. Records for this regulation regarding market conduct purposes shall be maintained for the current calendar year plus two prior calendar years. [Emphasis added.]*

Colorado Insurance Regulation 1-2-14, Concerning Bail Bonding Agent Record Keeping, Reporting Requirements and Daily Bond Register, promulgated under the authority of §§ 10-1-109, 12-7-102(3), 12-7-105, and 12-7-108, C.R.S., states in part:

...

Section 4. Definitions

...

- D. "Disclosure statement" means the form describing how collateral may be returned, how collateral may be used or forfeited and the physical address to which a copy of the court order releasing the bond shall be delivered. The Disclosure Statement must be in the form attached in Appendix C.
- E. "Executed agreement" or "indemnity agreement" means the agreement whereby the bail bonding agent agrees to post bond for a defendant. *Such agreement shall have the name, address, phone number and license number of the bail bonding agent preprinted or stamped on the form and must contain the following information: amount of bail set in the case, the name of the defendant to be released on the bond, the court case number, the court in which the bond is executed, the premium charged and the amount and type of collateral held by the bail bonding agent and the conditions under which the collateral will be returned. [Emphasis added.]*
- F. "Permanent office records" *means records of all bail bonds the bail bonding agent executes or countersigns, executed copies of the Disclosure Statement, executed agreement/indemnity agreement and prenumbered receipt for each bond undertaking, the Daily Bond Register and any other records pertaining to transactions made under the bail bonding agent's license. [Emphasis added.]*
- G. "Prenumbered receipt" means a preprinted or stamped, sequentially numbered receipt, *containing the following information: date the money or other consideration is received by the bail bonding agent (including any premium paid or collateral received), name of the defendant, a description of the consideration or amount of money received, the purpose for which the consideration or money*

was received, the number of the bail insurance company power-of-attorney form attached to the bond (if applicable/available), the penal sum of the bond, the name of the indemnitor, and the terms under which the money or other consideration shall be released. [Emphasis added.]

Section 5. Rules

...

B. PRENUMBERED RECEIPTS

Each bail bonding agent shall use preprinted or stamped, sequentially numbered receipts whenever money or any other consideration for a bond or undertaking is received by the bail bonding agent. The number of each prenumbered receipt must be entered in the Daily Bond Register in sequential order. Each prenumbered, sequentially numbered receipt shall contain the information listed in the definition above. The original prenumbered receipt must be signed and dated by a bail bonding agent and given to the defendant or third party indemnitor and a duplicate copy retained in the bail bonding agent's permanent office records. Bail bonding agents shall account for all of the prenumbered receipts in the Daily Bond Register, whether they were issued, destroyed or otherwise not used by the bail bonding agent.

C. EXECUTED AGREEMENT

Each original executed agreement/indemnity shall have the name, address, phone number and license number of the bail bonding agent preprinted or stamped on the form. *The original agreement must be maintained in the agent's permanent office records* and a duplicate copy must be provided to the defendant or third party indemnitor. The executed agreement must be signed and dated by the bail bonding agent and the defendant or third party indemnitor.

D. DISCLOSURE STATEMENT

The original *Disclosure Statement*, in the format contained in Appendix C, must be provided to the defendant or third party indemnitor for each bond posted *with a duplicate maintained in the agent's permanent office records*. The Disclosure Statement must be signed and dated by the bail bonding agent and the defendant or third party indemnitor.

E. PERMANENT OFFICE RECORDS

Pursuant to § 12-7-108(4) , C.R.S. (2004), *permanent office records must be maintained by each bail bonding agent for every undertaking taken or bond written under the bail bonding agent's license for three years immediately after the release of the bond or if collateral and/or promissory note taken, three years after the return of the collateral to the defendant or third party indemnitor or notice to the defendant or third party indemnitor that the terms of any promissory note have been satisfied. Proof of notice shall consist of, at a minimum, a signed release by the defendant or third party indemnitor that they received the promissory note marked paid by the bail bonding agent. Such notice shall be part of the agent's permanent office records. Bail bonding agents' permanent office*

records shall be open and available for inspection by the Commissioner or the Commissioner's designee upon reasonable notice during normal business hours.
[Emphasis added.]

The examiners selected a random sample of 686 files from a total population of 7,815 powers-of-attorney executed by the Company's bail bond agents to guarantee bail bonds posted during 2008. Twenty-three (23) files were not provided and were subsequently replaced with other randomly selected files. The bail bonding agents accepted collateral on thirty-six (36) of the files reviewed, promissory notes on 545 of the files reviewed, and payment plans on 104 of the files reviewed.

It appears that the Company and its agents are not in compliance with Colorado insurance law in that as set forth below the Company, through its agents, did not retain complete files or pertinent file documentation as part of its permanent office records sufficient to permit the examiners to review the Company's market conduct processes. The following is a summary of the findings:

Bail Bond Files – Missing Records

Files/Documents Missing	Number of Applicable Files Requested	Number of Documents Missing	Percent of Files with Documents Missing
Complete Files	709	23	3%
Indemnity Agreement	686	19	3%
Collateral Receipts	36	6	17%
Promissory Notes	545	3	1%
Premium Receipts	686	65	10%
Disclosure Statement	686	44	6%
Applications	686	22	3%
Payment Plan	104	38	37%

Recommendation No. 1:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of § 12-7-108, C.R.S., and Colorado Insurance Regulations 1-1-7 and 1-2-14. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has revised its procedures to ensure that all records required for market conduct purposes are retained and can be provided within the required time period. In the market conduct examination for the period January 1, to December 31, 2002, the Company was cited for failure, in some cases, of agents to maintain complete records for market conduct examinations. The violation resulted in Recommendation #16 of Final Agency Order O-04-057, that the "Respondent shall review, revise and implement procedures to ensure that agents maintain complete records for market conduct examinations in compliance with Colorado insurance law." Failure to comply with the previous order of the commissioner appears to constitute a violation of § 10-1-205, C.R.S.

COMPLAINT HANDLING

Issue C1: Failure to establish appropriate procedures to maintain a complete complaint log.
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Section 10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, states in part:

- (1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

...

- (i) Failure to maintain complaint handling procedures: Failing of any insurer to maintain *a complete record of all the complaints which it has received* since the date of its last examination. This record shall indicate the total number of complaints, their classification by line of instance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. For purposes of this paragraph (i) *“Complaint” shall mean any written communication primarily expressing a grievance.* [Emphases added.]

Colorado Insurance Regulation 6-2-1, Complaint Record Maintenance, promulgated under the authority of § 10-3-1110, C.R.S., states in part:

...

II. PURPOSE

Failure to maintain a record of complaints, as specified therein, is declared to be an unfair trade practice 10-3-1104 (1) (i), C.R.S. The purpose of this regulation is to prescribe the minimum information required to be maintained in such a record of complaints and to prescribe a format for such record which may be used by any person subject to this Regulation. [Emphasis added]

...

V. MAINTENANCE OF RECORD

The complaint record shall be kept on a calendar year basis and the number of complaints by line of insurance, function, reason, disposition, and state of origin shall be compiled not less frequently than annually.

The Company was requested to provide the Company’s definition of what constitutes a “complaint” and to provide a listing of all complaints filed with the Company during the examination period. The Company responded in part with the following definition:

“The Company’s definition of what constitutes a ‘complaint’ is any inquiry received from the Department of Insurance in any state in which the Company does business. While the Company occasionally receives inquiries from producers and/or consumers regarding bail matters, same are not included in our complaint register unless a formal written inquiry is made and further action is required.”

With regard to direct consumer complaints, the Company’s Complaint Procedures state:

“If a telephone call and/or written complaint is received from a consumer and/or agent, same should be directed to an officer of the Company for immediate attention, who should then communicate the concerns with the agent. Upon receipt of any agent input, an officer of the Company must determine the requisite action, if any, to cure any issue.”

The Company’s Complaint Procedures indicate that telephone complaints *should be directed* to an officer of the Company, but do not require such. In addition, the listing of all complaints filed with the Company during the examination period that was provided to the examiners reflected six (6) Colorado complaints that were received from the Division. The Complaint Register for the Company indicates only written complaints received by letter were included on the register.

Colorado insurance law defines a complaint as *any written communication primarily expressing a grievance* and requires that insurers maintain *a complete record of all the complaints which it has received*.

It appears that the Company is not in compliance with Colorado insurance law in the following ways:

- (1) Use of a more limited definition of a complaint than allowed by Colorado insurance law, and
- (2) The complaint handling practices of the Company do not allow it to determine whether it maintains a *complete* record of all complaints that have been received.

Recommendation No. 2:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of § 10-3-1104, C.R.S., and Colorado Insurance Regulation 6-2-1. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure that its complaint record is in compliance with Colorado insurance law.

PRODUCERS/AGENTS

Issue D1: Failure, in some instances, to appropriately contract with producers.

Section 10-2-415.5, C.R.S., Appointment of insurance producer bail bonding agent – continuation – renewal – exceptions, states in part:

- (1) No insurance producer with bail bonding agent authority as set forth in section 10-1-407(1)(f) *shall claim to be a representative or authorized or appointed agent of, or use any other term implying a contractual relationship with, a particular insurer or accept applications on behalf of such insurer unless such insurance producer becomes, pursuant to a contract in writing, a producer appointee, appointed by that insurer in accordance with this section, to act in the capacity of an agent of the insurer.* [Emphasis added.]

Section 10-2-416.5, C.R.S., Required availability to commissioner of list of producer appointees for enforcement purposes, states:

Each insurer shall maintain a current list of producers *contractually authorized* to accept applications on behalf of the insurer. [Emphasis added.]

The Company has demonstrated during this examination that it was keenly aware of and intimately familiar with House Bill 04-1240 and therefore the Company knew or reasonably should have known of the requirements in § 10-2-415.5, C.R.S. as said requirements were enacted as part of this bill.

The Company provided a list of sixty (60) bail bond agents who were active with the Company in 2008. The examiners reviewed the agent files for each of the sixty (60) bail bond agents.

It appears that the Company was not in compliance with Colorado insurance law in that during the review of the agents' files, the examiners identified thirty-two (32) instances in which the agents did not have a direct contract with the Company.

Insurer Bail Bond Files – Contracts with Producers

Population	Sample Size	Number of Exceptions	Total Error Rate
60	60	32	53%

Recommendation No. 3:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of §§ 10-2-415.5 and 10-2-416.5, C.R.S. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure all bail bond agents are contracted and appointed directly with the Company as required by Colorado insurance law.

Issue D2: Failure to require that bail bonding agents provide a list of all collateral taken to the insurer within twenty (20) days.

Section 12-7-107, C.R.S., Notice to surety, states in part:

...

- (5) The bail bonding agent shall prepare a list of all collateral taken for assurance of compliance with the bond issued and the fee paid therefor. *The bail bonding agent shall provide such list to the surety within twenty days of taking the collateral.* Failure to provide this written list to the surety, keep a file of all such lists for two years following the end of the calendar year in which each was prepared, or provide the list or a copy thereof to the commissioner on request is a violation of this section and shall be a ground for revocation of the bail bonding agent's license. [Emphasis added.]

The examiners selected a random sample of 686 files from a total population of 7,815 powers of attorney executed by the Company's bail bond agents to guarantee bail bonds posted during 2008. Collateral was taken by the bail bonding agent in connection with thirty-six (36) powers-of-attorney reviewed by the examiners. Six (6) collateral receipts were not provided to the examiners and have been cited as missing records in Issue A1.

It appears that the Company was not in compliance with Colorado insurance law in that it acknowledged it does not specifically provide for the reporting of collateral, and did not provide any copies of reports of collateral submitted by its bail bonding agents during calendar year 2008.

Insurer Bail Bond Files - Files in which Collateral was Taken

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
36	36	30	30	100%

Recommendation No. 4:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of §12-7-107, C.R.S. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to require that its agents submit a list of the collateral taken within twenty (20) days of taking the collateral.

CONTRACT FORMS

Issue E1: Failure to include all required information on the collateral receipt.

Section 12-7-108, C.R.S., Bonding agreement – place of business – records – payment schedule – disclosure statements, states in part:

- (1) All indemnity agreements, promissory notes, premium and *collateral receipts*, and bond revocation agreements shall be in writing *and signed by the bail bonding agent and the defendant or third-party indemnitor*. If the defendant or third-party indemnitor is illiterate or does not read the English language, such bail bonding agent shall note on the indemnity agreement that he or she or a third party has read or translated the agreement to the defendant or third-party indemnitor, and shall affix an affidavit attesting that the document was translated to the indemnity agreement. ... [Emphasis added.]

...

- (4) Each *bail bonding agent* who accepts money or any other consideration for a bond or undertaking *shall*, for each payment received, *give to each indemnitor* a prenumbered, *signed receipt as evidence of payment*. The prenumbered, signed receipt *shall state the date*, the name of the defendant, a description of the consideration or money received and the purpose for which it was received, the number of any power-of-attorney form attached to the bond, the penal sum of the bond, the name of the indemnitor, and the terms under which the money or other consideration shall be released. Each bail bonding agent shall retain a duplicate copy of each receipt issued as part of the agent's records and shall account for all of the prenumbered receipts whether they were issued to an indemnitor or destroyed, or otherwise not used by the agent. [Emphasis added.]

Section 12-7-109 C.R.S., Prohibited activities - penalties, states in part:

- (1) It is unlawful for any licensee under this article to engage in any of the following activities:

...

- (d.5) Except for the fee received for the bond, to fail to *return any collateral or security within ten working days* after receipt of a copy of the court order that results in a release of the bond by the court, unless the collateral also secures other obligations in compliance with section 12-7-108 (10). A copy of the court order shall be provided to the bonding agent in Colorado or the company, if any, for whom the bonding agent works whether in Colorado or out-of-state, or both, by the person for whom the bond was written; except that, if three years have elapsed from the date of the posting of the bond, unless a judgment has been entered against the surety or the principal for the forfeiture of the bond, or unless the court grants an extension of the three-year time period for good cause shown, the bail bonding agent, as principal or as surety, shall be exonerated and, at the request of the person who tendered the collateral or security, return the collateral or security to the person who posted the collateral or security within ten business days after the three-year time period. The commissioner may release a lien after the three-year time period has expired if the

lienholder cannot be contacted after an attempt has been made by certified mail and the attempt has failed. [Emphasis added]

- (e) Accept anything of value from a person on whose bond such licensee is surety or from others on behalf of such person except the fee or premium on the bond, but the bail bonding agent may accept collateral security or other indemnity if:

...

- (IV) The person from whom the collateral or security is taken is *issued a receipt describing the condition of the collateral at the time it is taken into the custody of the bail bonding agent*; [Emphasis added]

Colorado Insurance Regulation 1-2-14, Concerning Bail Bonding Agent Record Keeping, Reporting Requirements and Daily Bond Register, promulgated under the authority of §§ 10-1-109, 12-7-102(3), 12-7-105, and 12-7-108, C.R.S., states in part:

...

Section 4 Definitions

...

- G. "Prenumbered receipt" means a preprinted or stamped, sequentially numbered receipt, containing the following information: date the money or other consideration is received by the bail bonding agent (including any premium paid or collateral received), name of the defendant, a description of the consideration or amount of money received, the purpose for which the consideration or money was received, the number of the bail insurance company power-of-attorney form attached to the bond (if applicable/available), the penal sum of the bond, the name of the indemnitor, and the terms under which the money or other consideration shall be released.

Section 5 Rules

...

A. Prenumbered Receipts

Each bail bonding agent shall use preprinted or stamped, sequentially numbered receipts whenever money or any other consideration for a bond or undertaking is received by the bail bonding agent. The number of each prenumbered receipt must be entered in the Daily Bond Register in sequential order. Each prenumbered, sequentially numbered receipt shall contain the information listed in the definition above. The original prenumbered *receipt must be signed and dated by a bail bonding agent* and given to the defendant or third party indemnitor and a duplicate copy retained in the bail bonding agent's permanent office records. Bail bonding agents shall account for all of the prenumbered receipts in the

Daily Bond Register, whether they were issued, destroyed or otherwise not used by the bail bonding agent. [Emphasis added.]

The Company has provided a specimen collateral receipt that does not appear to meet the statutory requirements of Colorado insurance law in that the following are missing:

- There is no place for the signature of the bail bonding agent;
- There is no place for the date of the collateral receipt; and
- There is no place for a description of the condition of the collateral at time of receipt by the bail bond agent.

In addition, the receipt states that collateral will be returned within thirty (30) days of notice and verification by the court that the bond has been discharged while Colorado laws require collateral to be returned within ten (10) working days after release of the bond by the court.

The examiners selected a random sample of 686 files from a total population of 7,815 powers-of-attorney executed by the Company's bail bonding agents to guarantee bail bonds posted during 2008. Of the 686 files reviewed, the bail bonding agents received collateral in the execution of thirty-six (36) bonds. Six (6) collateral receipts were not provided to the examiners and have been cited as missing records in Issue A1. The agents used the Company-provided collateral receipt form on twenty-eight (28) of the thirty (30) records reviewed. As a result of the use of this incomplete form, it appears that the Company and its agents are not in compliance with Colorado insurance law in that the following items were missing from the executed collateral receipts, as noted below.

In twenty-four (24) cases, the agents failed to include the signature of the bail bonding agent and the date the collateral was received on the collateral receipts issued by the agents.

Bail Bond Producer Files – Collateral Receipts, Signed and Dated by Bail Bonding Agent

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
7,815	36	30	24	80%

Form Name

Form Number

Collateral Receipt

No Form Number

Recommendation No. 5:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of §§ 12-7-108 and 12-7-109, C.R.S., and Colorado Insurance Regulation 1-2-14. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure that all collateral receipts issued by its bail bonding agents include all required information as required by Colorado insurance law.

Issue E2: Failure to provide a signature line for the bail bonding agent on the promissory note.

Section 12-7-108, C.R.S., Bonding agreement – place of business – records – payment schedule – disclosure statements, states in part:

- (1) All indemnity agreements, *promissory notes*, premium and collateral receipts, and bond revocation agreements shall be in writing *and signed by the bail bonding agent* and the defendant or third-party indemnitor. If the defendant or third-party indemnitor is illiterate or does not read the English language, such bail bonding agent shall note on the indemnity agreement that he or she or a third party has read or translated the agreement to the defendant or third-party indemnitor, and shall affix an affidavit attesting that the document was translated to the indemnity agreement. ... [Emphasis added.]

The Company has provided a specimen Promissory Note that does not appear to meet the statutory requirements of Colorado insurance law in that there is no designated place on the contingent promissory note for the signature of the bail bonding agent.

Form Name

Form Number

Contingent Promissory Note

No Form Number

Recommendation No. 6:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of § 12-7-108, C.R.S. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure that its contingent promissory note includes a designated place for the signature of the bail bonding agent as required by Colorado insurance law.

Issue E3: Failure to include all required information on its executed/indemnity agreement.

Section 12-7-108, C.R.S., Bonding agreement – place of business – records – payment schedule – disclosure statements, states in part:

- (1) All *indemnity agreements*, promissory notes, premium and collateral receipts, and bond revocation agreements shall be in writing *and signed by the bail bonding agent and the defendant or third-party indemnitor*. If the defendant or third-party indemnitor is illiterate or does not read the English language, such bail bonding agent shall note on the indemnity agreement that he or she or a third party has read or translated the agreement to the defendant or third-party indemnitor, and shall affix an affidavit attesting that the document was translated to the indemnity agreement. ... [Emphasis added.]

...

- (5) The bail bonding agent shall keep at the place of his or her business, or is an agent for service of process required pursuant to subsection (2) of this section, shall make available at the business of the agent for service of process all records pertaining to transactions made under the agent's license and shall keep all the records as to any particular transaction available and open to inspection by the commissioner or the commissioner's authorized representative during normal business hours for the three years immediately after the date of release of the bond and return of the collateral, if applicable, or proof of notice to the defendant or third-party indemnitor that the terms if any promissory note have been satisfied. Such records include, without limitation:

...

- (c) An executed agreement, signed by the indemnitor and a licensed bail agent, setting forth the amount of bail set in the case, the name of the defendant released on the bond, the *court case number*, if available, and *the court in which the bond is executed*, the *premium charged*, the *amount and type of collateral held by the bail bonding agent*, and *the conditions under which the collateral will be returned*. [Emphasis added.]

Colorado Insurance Regulation 1-2-14, Concerning Bail Bonding Agent Record Keeping, Reporting Requirements and Daily Bond Register, promulgated under the authority of §§ 10-1-109, 12-7-102(3), 12-7-105, and 12-7-108, C.R.S., states in part:

...

Section 4 Definitions

...

- E. "Executed agreement" or "indemnity agreement" means the agreement whereby the bail bonding agent agrees to post bond for a defendant. Such agreement *shall have the name, address, phone number and license number of the bail bonding agent preprinted or stamped on the form and must contain the following information: amount of bail set in the case, the name of the defendant to be released on the bond, the court case number, the court in which the bond is*

executed, the premium charged and the amount and type of collateral held by the bail bonding agent and the conditions under which the collateral will be returned. [Emphasis added.]

Section 5 Rules

...

C. Executed Agreement

Each original executed agreement/indemnity shall have the name, address, phone number and license number of the bail bonding agent preprinted or stamped on the form. The original agreement must be maintained in the agent's permanent office records and a duplicate copy must be provided to the defendant or third party indemnitor. *The executed agreement must be signed and dated by the bail bonding agent and the defendant or third party indemnitor.* [Emphasis added.]

The Company provided a specimen Indemnity Agreement that does not appear to meet the statutory requirements of Colorado insurance law in that the following are missing:

- There is no place on the Indemnity Agreement for the signature of the bail bond agent;
- There is no place on the Indemnity Agreement for the court name to be entered;
- There is no place on the Indemnity Agreement for the court case number to be entered; and
- There is no place on the Indemnity Agreement for the amount and type of collateral.

Form Name

Form Number

Indemnity Agreement

No Form Number

Recommendation No. 7:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of § 12-7-108, C.R.S., and Colorado Insurance Regulation 1-2-14. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure that its indemnity agreements include space for all required information as required by Colorado insurance law.

Issue E4: Failure to set forth the terms of release of money or other consideration on the premium receipt.
--

Section 12-7-108, C.R.S, Bonding agreement – place of business – records – payment schedule – disclosure statements, states in part:

...

- (4) Each bail bonding agent who accepts money or any other consideration for a bond or undertaking shall, for each payment received, give to each indemnitor a prenumbered, signed receipt as evidence of payment. The prenumbered, signed receipt shall state the date, the name of the defendant, *a description of the consideration or money received and the purpose for which it was received*, the number of any power-of-attorney form attached to the bond, the penal sum of the bond, the name of the indemnitor, *and the terms under which the money or other consideration shall be released*. Each bail bonding agent shall retain a duplicate copy of each receipt issued as part of the agent's records and shall account for all of the prenumbered receipts whether they were issued to an indemnitor or destroyed, or otherwise not used by the agent. [Emphasis added.]

Colorado Insurance Regulation 1-2-14, Concerning Bail Bonding Agent Record Keeping, Reporting Requirements and Daily Bond Register, promulgated under the authority of §§ 10-1-109, 12-7-102(3), 12-7-105, and 12-7-108, C.R.S., states in part:

...

Section 4 Definitions

...

- G. "Prenumbered receipt" means a preprinted or stamped, sequentially numbered receipt, containing the following information: date the money or other consideration is received by the bail bonding agent (including any premium paid or collateral received), name of the defendant, a description of the consideration or amount of money received, the purpose for which the consideration or money was received, the number of the bail insurance company power-of-attorney form attached to the bond (if applicable/available), the penal sum of the bond, the name of the indemnitor, and *the terms under which the money or other consideration shall be released*. [Emphasis added.]

...

Section 5 Rules

...

B. Prenumbered Receipts

Each bail bonding agent shall use preprinted or stamped, sequentially numbered receipts whenever money or any other consideration for a bond or undertaking is received by the bail bonding agent. The number of each prenumbered receipt must be entered in the Daily Bond Register in sequential order. *Each prenumbered, sequentially numbered receipt shall contain*

the information listed in the definition above. The original prenumbered receipt must be signed and dated by a bail bonding agent and given to the defendant or third party indemnitor and a duplicate copy retained in the bail bonding agent's permanent office records. Bail bonding agents shall account for all of the prenumbered receipts in the Daily Bond Register, whether they were issued, destroyed or otherwise not used by the bail bonding agent.
[Emphasis added]

The Company provided a specimen copy of a premium receipt that does not appear to meet the statutory requirements of Colorado insurance law. The receipt does not set forth the terms of release of money or other considerations as required by Colorado law.

The examiners selected a random sample of 686 files from a total population of 7,815 powers-of-attorney executed by the Company's bail bond agents to guarantee bail bonds posted during 2008. Sixty-seven (67) premium receipts were not provided to the examiners and have been cited as missing records in Issue A1. The agents used the Company-provided premium receipt form for which the terms of release were cited as missing on 593 of the 619 records reviewed.

As a result of the use of this inadequate form, it appears that the Company and its agents are not in compliance with Colorado insurance law in that the following items were missing from the premium receipts as noted below.

In 593 instances, the agents failed to include the terms under which the money or other consideration will be released on the premium receipts issued by the agents.

Bail Bond Producer Files – Premium Receipts, Terms of Release

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
7,815	686	619	593	96%

Form Name

Form Number

Premium Receipt

No Form Number

Recommendation No. 8:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of § 12-7-108, C.R.S. and Colorado Insurance Regulation 1-2-14. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure that its premium receipts set forth the terms of release of money or other considerations as required by Colorado insurance law.

RATES

Issue F1: Failure to establish underwriting criteria to support the premium charged and to apply such criteria uniformly across all underwritten risk.

Section 10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, states in part:

- (1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

...

- (f) Unfair discrimination:

...

- (II) *Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever; [Emphasis added.]*

Section 10-4-403, C.R.S., Standards for rates - competition - procedure - requirement for independent actuarial opinions regarding 1991 legislation, states in part:

- (1) Rates shall not be excessive, inadequate, or *unfairly discriminatory*. The following rate standards shall apply:

...

- (c) *Concerning unfair discrimination, unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory solely if different premiums result for policyholders with like loss exposures but different expenses, or like expenses but different loss exposures, so long as the rate reflects the differences with reasonable accuracy. Additionally, the provisions of section 10-3-1104 (1) (f) shall apply. [Emphasis added]*

Section 12-7-108, C.R.S., Bonding agreement – place of business – records – payment schedule – disclosure statements, states in part:

...

- (8) Except for bond filing fees charged by a court or law enforcement agency and the actual cost of storing collateral in a secure, self-service public storage facility or premium financing fees, *no bail bonding agent licensed under this article shall charge for such bail bonding agent's premium, commission, or fee an amount more than fifteen percent of the amount of bail furnished by such bonding agent or fifty dollars, whichever is more. [Emphasis added.]*

Section 12-7-110.5, C.R.S., Rate filing - rules, states in part:

- (1) All cash and professional cash bail bonding agents and all surety companies shall file with the division of insurance a schedule of premium rates charged for bail by the bail bonding agent and shall file revised rates with the division whenever the rates change.
- (2) The commissioner of insurance shall promulgate rules regarding the rate filing requirement pursuant to this section.

Colorado Insurance Regulation 1-2-15, Bail Bond Premium Rate Filing Requirements, promulgated under the authority of §§ 10-1-109, 10-4-404, 10-4-404.5, 12-7-102(3) and 12-7-110.5, C.R.S., states in part:

...

Section 2 Basis and Purpose

The purpose of this regulation is to establish the requirements for the filing of the schedule of premium rates *pursuant to the newly enacted statutory provision in §12-7-110.5(1), C.R.S.* This regulation replaces Emergency Regulation 04-E-10 in its entirety. [Emphasis added]

Section 3 Applicability and Scope

This regulation shall apply to all cash bail bonding agents, professional cash bail bonding agents *and bail insurance companies that write bail bonds in the state of Colorado.* [Emphasis added.]

...

Section 5 Rules

- A. All cash bonding agents, professional cash bail agents and all bail insurance companies shall file with the Division of Insurance, concurrent with or prior to use, all revisions to previously filed rates charged for bail by the bail bonding agent.
 - B. If the premium rates in use on any day after July 1, 2004 are different from those filed in accordance with paragraph 5.A above, the cash bonding agent or professional cash bail agent shall file a separate form, as exhibited in Appendix A, for each change in the premium rate by October 1, 2004.
- ...
- C. All bail insurance companies must continue to file information, including a schedule of premium rates, necessary to ensure compliance with §10-4-403, C.R.S., which requires that rates not be excessive, inadequate, or unfairly discriminatory. Filing requirements are provided in Colorado Insurance Regulation 5-1-10 and the most current property and casualty filing bulletin. These documents can be accessed on the Division's website: www.dora.state.co.us/insurance. [Emphases added.]

The examiners selected a random sample of 686 files from a total population of 7,815 powers-of-attorney executed by the Company's bail bond agents to guarantee bail bonds posted during 2008. The Company's rate filing in effect during the examination period provided for a rate of "UP TO 15% OF THE AMOUNT OF THE BOND OR \$20.00, WHICHEVER IS MORE."

It appears that the Company and its agents are not in compliance with Colorado insurance law in that in 366 cases, the agents failed to charge the same premium, equal to the greater of \$20.00 or up to 15% of the amount of bail provided. What appear to be similarly situated individuals were charged different rates for the same bond amounts with no justification in the file to explain why such individual was being charged a premium less than the filed rate. Section 10-4-403, C.R.S., permits different premium rates to be charged provided the rate reflects the differences between different loss exposures with reasonable accuracy. Charging a rate which is different for individuals with the same bond amounts, without documented justification for the premium differences, appears to be unfair discrimination in the rates charged.

Bail Bond Producer Files - Premium Charges

Population	Sample Size	Number of Exceptions	Total Error Rate
7,815	686	366	53%

Recommendation No. 9:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of §§ 10-3-1104, 10-4-403, 12-7-108, 12-7-110.5, C.R.S., and Colorado Insurance Regulation 1-2-15. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has established underwriting criteria sufficient to ensure that similarly situated individuals and risks are treated uniformly in the rates that they are charged, and that it has implemented procedures to ensure that its bail bond producers charge the appropriate filed premium based on the Company's established underwriting criteria.

NEW BUSINESS

Issue G1: Failure, in some instances, to include all required information on the executed/indemnity agreements.
--

Section 12-7-108, C.R.S., Bonding agreement – place of business – records – payment schedule – disclosure statements, states in part:

- (1) All indemnity agreements, promissory notes, premium and collateral receipts, and bond revocation agreements shall be in writing and signed by the bail bonding agent and the defendant or third-party indemnitor.
- ...
- (5) The bail bonding agent shall keep at the place of his or her business, or is an agent for service of process required pursuant to subsection (2) of this section, shall make available at the business of the agent for service of process all records pertaining to transactions made under the agent's license and shall keep all the records as to any particular transaction available and open to inspection by the commissioner or the commissioner's authorized representative during normal business hours for the three years immediately after the date of release of the bond and return of the collateral, if applicable, or proof of notice to the defendant or third-party indemnitor that the terms if any promissory note have been satisfied. Such records include, without limitation:
- ...
- (c) An executed agreement, *signed by the indemnitor and a licensed bail agent*, setting for the amount of bail set in the case, the name of the defendant released on the bond, *the court case number, if available, and the court in which the bond is executed, the premium charged*, the amount and type of collateral held by the bail bonding agent, and the conditions under which the collateral will be returned. [Emphasis added.]

Colorado Insurance Regulation 1-2-14, Concerning Bail Bonding Agent Record Keeping, Reporting Requirements and Daily Bond Register, promulgated under the authority of §§ 10-1-109, 12-7-102(3), 12-7-105, and 12-7-108, C.R.S., states in part:

...

Section 4 Definitions

...

- E. "Executed agreement" or "indemnity agreement" means the agreement whereby the bail bonding agent agrees to post bond for a defendant. Such agreement shall have *the name, address, phone number and license number of the bail bonding agent preprinted or stamped on the form* and must contain the following information: *amount of bail set in the case*, the name of the defendant to be released on the bond, *the court case number, the court in which the bond is executed, the premium charged* and the amount and type of collateral held by the bail bonding agent and the conditions under which the collateral will be returned. [Emphasis added.]

- F. "Permanent office records" means records of all bail bonds the bail bonding agent executes or countersigns, executed copies of the Disclose Statement, executed agreement/indemnity agreement and prenumbered receipt of each bond undertaking, the Daily Bond Register and any other records pertaining to transactions made under the bail bonding agent's license.

Section 5. Rules

...

C. Executed Agreement

Each original executed agreement/indemnity *shall have the name, address, phone number and license number of the bail bonding agent preprinted or stamped on the form.* The original agreement must be maintained in the agent's permanent office records and a duplicate copy must be provided to the defendant or third party indemnitor. The executed agreement must be *signed* and dated *by the bail bonding agent* and the defendant or third party indemnitor. [Emphasis added.]

The examiners selected a random sample of 686 files from a total population of 7,815 powers-of-attorney executed by the Company's bail bond agents to guarantee bail bonds posted during 2008. Nineteen (19) executed/indemnity agreements were not provided to the examiners and have been cited as missing records in Issue A1.

It appears that in some cases, the Company and its agents are not in compliance with Colorado insurance law in that the following items were missing from the executed/indemnity agreements as noted below.

In 575 instances, the Company failed, through its agents, to include the name, address, phone number, or license number of the bail bonding agent preprinted or stamped on the executed/indemnity agreements.

Bail Bond Producer Files – Executed/Indemnity Agreement, Preprinted or Stamped Contact Information

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
7,815	686	667	575	86%

In 640 instances, the Company failed, through its agents, to include the court case number on these executed/indemnity agreements.

Bail Bond Producer Files – Executed/Indemnity Agreement, Court Case Number

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
7,815	686	667	640	96%

In 515 instances, the Company failed, through its agents, to include the court in which the bond is executed on the executed/indemnity agreements issued by the agents.

Bail Bond Producer Files – Executed/Indemnity Agreement, Court Name

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
7,815	686	667	515	77%

In 164 instances, the Company failed, through its agents, to include the amount of premium charged on the executed/indemnity agreements issued by the agents.

Bail Bond Producer Files – Executed/Indemnity Agreement, Amount of Premium

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
7,815	686	667	164	25%

In ninety-one (91) instances, the Company failed, through its agents, to include the amount of bail set in the case on the executed/indemnity agreements issued by the agents.

Bail Bond Producer Files – Executed/Indemnity Agreement, Amount of Bail

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
7,815	686	667	91	14%

In 252 instances, the Company failed, through its agents, to include the signature of the bail bonding agent on the executed/indemnity agreements issued by the agents.

Bail Bond Producer Files – Executed/Indemnity Agreement, Signature of the Bonding Agent

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
7,815	686	667	252	38%

Recommendation No. 10:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of § 12-7-108, C.R.S. and Colorado Insurance Regulation 1-2-14. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure that all executed/indemnity agreements include all information required by Colorado insurance law.

Issue G2: Failure, in some instances, to include the signature of the bail bonding agent on promissory notes.
--

Section 12-7-108, C.R.S, Bonding agreement – place of business – records – payment schedule – disclosure statements, states:

- (1) *All indemnity agreements, promissory notes, premium and collateral receipts, and bond revocation agreements shall be in writing and signed by the bail bonding agent and the defendant or third-party indemnitor. If the defendant or third-party indemnitor is illiterate or does not read the English language such bail bonding agent shall note on the indemnity agreement that he or she or a third party has read or translated the agreement to the defendant or third-party indemnitor, and shall affix a affidavit attesting that the document was translated to the indemnity agreement. Premium receipts shall be signed, be dated, and list the amount of the bail bond, and original given to the defendant or the third-party indemnitor.*

The examiners selected a random sample of 686 files from a total population of 7,815 powers of attorney executed by the Company's bail bond agents to guarantee bail bonds posted during 2008. Of the 686 files reviewed, the bail bonding agents completed promissory notes in the execution of 545 bonds. Three (3) promissory notes were not provided to the examiners and have been cited as missing records in Issue A1.

It appears that the Company and its agents are not in compliance with Colorado insurance law in that in 142 instances, the Company failed, through its agents, to include the signature of the bail bonding agent on promissory notes executed by the bail bonding agents.

Bail Bond Producer Files – Promissory Notes, Signature of Bail Bonding Agent

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
7,815	545	542	142	26%

Recommendation No. 11:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of § 12-7-108, C.R.S. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure the signature of the bail bonding agent is included on all promissory notes as required by Colorado insurance law.

Issue G3: Failure, in some instances, to notify the defendant or third-party indemnitor that the promissory notes received had been satisfied.

Section 12-7-108, C.R.S., Bonding agreement – place of business – records – payment schedule – disclosure statements, states in part:

- (1) All indemnity agreements, promissory notes, premium and collateral receipts, and bond revocation agreements shall be in writing and signed by the bail bonding agent and the defendant or third-party indemnitor.
- ...
- (5) The bail bonding agent shall keep at the place of his or her business, or is an agent for service of process required pursuant to subsection (2) of this section, shall make available at the business of the agent for service of process all records pertaining to transactions made under the agent's license and shall keep all the records as to any particular transaction available and open to inspection by the commissioner or the commissioner's authorized representative during normal business hours for the three years immediately after the date of release of the bond and return of the collateral, if applicable, or *proof of notice to the defendant or third-party indemnitor that the terms of any promissory note have been satisfied*. Such records include, without limitation: [Emphasis added.]
- ...
- (c) An executed agreement, signed by the indemnitor and a licensed bail agent, setting forth the amount of bail set in the case, the name of the defendant released on the bond, the court case number, if available, and the court in which the bond is executed, the premium charged, the amount and type of collateral held by the bail bonding agent, and the conditions under which the collateral will be returned;

Colorado Insurance Regulation 1-2-14, Concerning Bail Bonding Agent Record Keeping, Reporting Requirements and Daily Bond Register, promulgated under the authority of §§ 10-1-109, 12-7-102(3), 12-7-105, and 12-7-108, C.R.S., states in part:

...

Section 5 Rules

...

E. PERMANENT OFFICE RECORDS

Pursuant to §12-7-108(4), C.R.S. (2004), permanent office records must be maintained by each bail bonding agent for every undertaking taken or bond written under the bail bonding agent's license for three years immediately after the release of the bond or if collateral and/or promissory note taken, three years after the return of the collateral to the defendant or third party indemnitor or notice to the defendant or third party indemnitor that the terms of any promissory note have been satisfied. Proof of notice shall consist of, at a minimum, a signed release by the defendant or third party indemnitor that they received the

promissory note marked paid by the bail bonding agent. Such notice shall be part of the agent's permanent office records. Bail bonding agents' permanent office records shall be open and available for inspection by the Commissioner or the Commissioner's designee upon reasonable notice during normal business hours.

The examiners selected a random sample of 686 files from a total population of 7,815 powers of attorney executed by the Company's bail bond agents to guarantee bail bonds posted during 2008. Of the 686 files reviewed, the bail bonding agents appear to have executed promissory notes in the execution of 545 bonds. Three (3) promissory notes were not provided to the examiners and have been cited as missing records in Issue A1.

It appears that the Company and its agents are not in compliance with Colorado insurance law in that in 157 instances, the Company failed, through its agents, to notify the defendant or third-party indemnitor that the promissory notes received had been satisfied.

Bail Bond Producer Files – Notification of Promissory Note Satisfaction

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
7,815	545	542	157	29%

Recommendation No. 12:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of § 12-7-108, C.R.S. and Colorado Insurance Regulation 1-2-14. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to notify the defendant or third-party indemnitor that the promissory notes received had been satisfied as required by Colorado insurance law.

Issue G4: Failure, in some instances, to include all required information on the premium receipts that were issued by the agents.

Section 12-7-108, C.R.S, Bonding agreement – place of business – records – payment schedule – disclosure statements, states in part:

...

- (4) Each bail bonding agent who accepts money or any other consideration for a bond or undertaking shall, for each payment received, give to each indemnitor a prenumbered, signed receipt as evidence of payment. The prenumbered, signed receipt shall state the date, the name of the defendant, *a description of the consideration or money received* and the purpose for which it was received, *the number of any power-of-attorney form attached to the bond*, the penal sum of the bond, *the name of the indemnitor*, and the terms under which the money or other consideration shall be released. Each bail bonding agent shall retain a duplicate copy of each receipt issued as part of the agent's records and shall account for all of the prenumbered receipts whether they were issued to an indemnitor or destroyed, or otherwise not used by the agent. [Emphasis added.]

Colorado Insurance Regulation 1-2-14, Concerning Bail Bonding Agent Record Keeping, Reporting Requirements and Daily Bond Register, promulgated under the authority of §§ 10-1-109, 12-7-102(3), 12-7-105, and 12-7-108, C.R.S., states in part:

...

Section 4 Definitions

...

- G. "Prenumbered receipt" means a preprinted or stamped, sequentially numbered receipt, containing the following information: date the money or other consideration is received by the bail bonding agent (including any premium paid or collateral received), name of the defendant, a description of the consideration or amount of money received, the purpose for which the consideration or money was received, *the number of the bail insurance company power-of-attorney form attached to the bond (if applicable/available)*, the penal sum of the bond, the name of the indemnitor, and the terms under which the money or other consideration shall be released. [Emphasis added.]

Section 5 Rules

...

B. Prenumbered Receipts

Each bail bonding agent shall use preprinted or stamped, sequentially numbered receipts whenever money or any other consideration for a bond or undertaking is received by the bail bonding agent. The number of each prenumbered receipt must be entered in the Daily Bond Register in sequential order. Each prenumbered, sequentially numbered receipt shall contain the information listed in the definition above. The original prenumbered receipt must be signed and dated

by a bail bonding agent and given to the defendant or third party indemnitor and a duplicate copy retained in the bail bonding agent's permanent office records. Bail bonding agents shall account for all of the prenumbered receipts in the Daily Bond Register, whether they were issued, destroyed or otherwise not used by the bail bonding agent.

The examiners selected a random sample of 686 files from a total population of 7,815 powers-of-attorney executed by the Company's bail bond agents to guarantee bail bonds posted during 2008. Sixty-five (65) premium receipts were not provided to the examiners and have been cited as missing records in Issue A1.

It appears that the Company and its agents are not in compliance with Colorado insurance law in that the following items were missing from the premium receipts as noted below.

In 439 instances, the Company failed, through its agents, to include a description of the consideration or money received on the premium receipts issued.

Bail Bond Producer Files – Premium Receipts, Description of Consideration

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
7,815	686	621	439	71%

In 468 instances, the Company failed, through its agents, to indicate the number of the power-of-attorney form attached to the bond on the premium receipts issued.

Bail Bond Producer Files – Premium Receipts, Power-of-Attorney Number

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
7,815	686	621	468	75%

In 124 instances, the agents failed to include the name of the indemnitor on the premium receipts issued by the agents.

Bail Bond Producer Files – Premium Receipts, Name of Indemnitor

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
7,815	686	621	124	20%

Recommendation No. 13:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of § 12-7-108, C.R.S. and Colorado Insurance Regulation 1-2-14. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure that all required information is included on the premium receipts as required by Colorado insurance law.

Issue G5: Failure, in some instances, to enter and/or to enter in sequential order, the premium and collateral receipt numbers on the daily bond register.

Section 12-7-108, C.R.S, Bonding agreement – place of business – records – payment schedule – disclosure statements, states:

...

- (3) As a minimum requirement of permanent office records, each bail bonding agent who is engaged in the bail bond business shall maintain a current and up-to-date bond register in a form with such content as prescribed by the commissioner that shall identify all bonds or undertakings executed by the licensee.
- (4) Each *bail bonding agent* who accepts money or any other consideration for a bond or undertaking *shall*, for each payment received, give to each indemnitor a prenumbered, signed receipt as evidence of payment. The prenumbered, signed receipt shall state the date, the name of the defendant, a description of the consideration or money received and the purpose for which it was received, the number of any power-of-attorney form attached to the bond, the penal sum of the bond, the name of the indemnitor, and the terms under which the money or other consideration shall be released. Each bail bonding agent shall retain a duplicate copy of each receipt issued as part of the agent's records and shall account for all of the prenumbered receipts whether they were issued to an indemnitor or destroyed, or otherwise not used by the agent.

Colorado Insurance Regulation 1-2-14, Concerning Bail Bonding Agent Record Keeping, Reporting Requirements and Daily Bond Register, as promulgated under the authority of §§ 10-1-109, 12-7-102(3), 12-7-105, and 12-7-108, C.R.S., states in part:

...

Section 4 Definitions

...

- C. "Daily bond register" means the current and up-to-date bond register required by § 12-7-108(3), C.R.S. that identifies every executed bond or undertaking taken by the bail bonding agent using the form attached in Appendix A.

...

- G. "Prenumbered receipt" means a preprinted or stamped, sequentially numbered receipt, containing the following information: date the money or other consideration is received by the bail bonding agent (including any premium paid or collateral received), name of the defendant, a description of the consideration or amount of money received, the purpose for which the consideration or money was received, the number of the bail insurance company power-of-attorney form attached to the bond (if applicable/available), the penal sum of the bond, the name of the indemnitor, and the terms under which the money or other consideration shall be released.

...

Section 5 Rules

A. DAILY BOND REGISTER

Each bail bonding agent shall maintain a current and up-to-date Daily Bond Register that identifies every executed bond or undertaking taken by the bail bonding agent, in the form prescribed in Appendix A, as part of their permanent office records. The form contained in Appendix A shall also be used for the annual report to the Division by § 12-7-105, C.R.S. Annual reports covering the twelve-month period of July 1 of the prior calendar year through June 30 of the current calendar year are due no later than November 1 of each year, and must include the affidavit in Appendix B.

B. PRENUMBERED RECEIPTS

Each bail bonding agent shall use preprinted or stamped, sequentially numbered receipts whenever money or any other consideration for a bond or undertaking is received by the bail bonding agent. The number of each prenumbered receipt must be entered in the Daily Bond Register in sequential order. Each prenumbered, sequentially numbered receipt shall contain the information listed in the definition above. The original prenumbered receipt must be signed and dated by a bail bonding agent and given to the defendant or third party indemnitor and a duplicate copy retained in the bail bonding agent's permanent office records. Bail bonding agents shall account for all of the prenumbered receipts in the Daily Bond Register, whether they were issued, destroyed or otherwise not used by the bail bonding agent. [Emphasis added.]

...

E. PERMANENT OFFICE RECORDS

Pursuant to § 12-7-108(4), C.R.S. (2004), permanent office records must be maintained by each bail bonding agent for every undertaking taken or bond written under the bail bonding agent's license for three years immediately after the release of the bond or if collateral and/or promissory note taken, three years after the return of the collateral to the defendant or third party indemnitor or notice to the defendant or third party indemnitor that the terms of any promissory note have been satisfied. Proof of notice shall consist of, at a minimum, a signed release by the defendant or third party indemnitor that they received the promissory note marked paid by the bail bonding agent. Such notice shall be part of the agent's permanent office records. Bail bonding agents' permanent office records shall be open and available for inspection by the Commissioner or the commissioner's designee upon reasonable notice during normal business hours.

The examiners selected a random sample of 686 files from a total population of 7,815 powers-of-attorney executed by the Company's bail bond agents to guarantee bail bonds posted during 2008. Sixty-five (65) premium receipts were not provided to the examiners and have been cited as missing records in Issue A1.

It also appears that the Company and its agents are not in compliance with Colorado insurance law in that in sixty-four (64) instances, the Company failed, through its agents, to enter the premium receipt number

on the Daily Bond Register, as required in the format contained in Appendix A of Colorado Insurance Regulation 1-2-14.

Bail Bond Producer Files – Daily Bond Register, Premium Receipt Number

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
7,815	686	621	64	10%

The randomly selected files included bonds issued by twenty-nine (29) different producers of the sixty (60) who were active with the Company in 2008.

It appears that the Company and its agents are not in compliance with Colorado insurance law in that for the records of twenty-seven (27) agents, the Company failed, through its agents, to enter the premium receipt number in sequential order on the Daily Bond Register.

Bail Bond Producer Files – Premium Receipts Entered Sequentially in Daily Bond Register

Population	Sample Size	Number of Exceptions	Total Error Rate
60	29	27	93%

Of the 686 files reviewed, the bail bonding agents received collateral in the execution of thirty-six (36) bonds. Six (6) collateral receipts were not provided to the examiners and have been cited as missing records in Issue A1.

It appears that the Company and its agents are not in compliance with Colorado insurance law in that in twenty-nine (29) instances, the Company failed, through its agents, to enter the collateral receipt number on the daily bond register.

Bail Bond Producer Files – Daily Bond Register, Collateral Receipt Number

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
7,815	36	30	29	97%

Recommendation No. 14:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of § 12-7-108, C.R.S. and Colorado Insurance Regulation 1-2-14. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure that the premium and collateral receipt numbers are entered in sequential order on the Daily Bond Register, as required by Colorado insurance law.

Issue G6: Failure, in some instances, to include all required information on the Disclosure Statement as required in the format prescribed by the Commissioner.
--

Section 12-7-108, C.R.S, Bonding agreement – place of business – records – payment schedule – disclosure statements, states in part:

...

- (9) Every bail bonding agent shall provide, in a form prescribed by the commissioner, a disclosure statement to each defendant or third-party indemnitor.

Colorado Insurance Regulation 1-2-14, Concerning Bail Bonding Agent Record Keeping, Reporting Requirements and Daily Bond Register, promulgated under the authority of §§ 10-1-109, 12-7-102(3), 12-7-105, and 12-7-108, C.R.S., states in part:

Section 4 Definitions

...

- D. “Disclosure statement” means the form describing how collateral may be returned, how collateral may be used or forfeited and the physical address to which a copy of the court order releasing the bond shall be delivered. The Disclosure Statement must be in the form attached in Appendix C.

Section 5 Rules

...

D. DISCLOSURE STATEMENT

The original Disclosure Statement, in the format contained in Appendix C, must be provided to the defendant or third party indemnitor for each bond posted with a duplicate maintained in the agent’s permanent office records. The Disclosure Statement must be signed and dated by the bail bonding agent and the defendant or third party indemnitor.

The examiners selected a random sample of 686 files from a total population of 7,815 powers-of-attorney executed by the Company’s bail bond agents to guarantee bail bonds posted during 2008. Forty-four (44) disclosure statements were not provided to the examiners and have been cited as missing records in Issue A1.

It appears that the Company and its agents are not in compliance with Colorado insurance law in that the following items were missing from the executed Disclosure Statement, as noted below.

In 342 instances, the Company failed, through its agents, to include the preprinted or stamped, name, address and phone number of the bail bonding agent or agent for service of process on the Disclosure Statements on the form as defined in Appendix C of Colorado Insurance Regulation 1-2-14.

Bail Bond Producer Files – Disclosure Statements, Name, Address, and Phone Number of Agent

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
7,815	686	642	342	53%

In 91 instances, the Company failed, through its agents, to indicate the name of the defendant on the Disclosure Statement as such form is defined in Appendix C of Colorado Insurance Regulation 1-2-14.

Bail Bond Producer Files – Disclosure Statements, Name of Defendant

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
7,815	686	642	91	14%

In 488 instances, the Company failed, through its agents, to indicate the power of attorney number on the Disclosure Statement, which is a required entry (if available) on such form as defined in Appendix C of Colorado Insurance Regulation 1-2-14.

Bail Bond Producer Files – Disclosure Statements, Power-of-Attorney Number

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
7,815	686	642	488	76%

In 100 instances, the Company failed, through its agents, to include the name and address of the Surety Company on the Disclosure Statement as such form is defined in Appendix C of Colorado Insurance Regulation 1-2-14.

Bail Bond Producer Files – Disclosure Statement, Name and Address of Surety Company

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
7,815	686	642	100	16%

In 100 instances, the Company failed, through its agents, to include the phone number of the Surety Company on the Disclosure Statement as such form is defined in Appendix C of Colorado Insurance Regulation 1-2-14.

Bail Bond Producer Files – Disclosure Statement, Phone Number of Surety Company

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
7,815	686	642	100	16%

In ninety-nine (99) instances, the Company failed, through its agents, to include the amount of bail set by the court on the Disclosure Statement as such form is defined in Appendix C of Colorado Insurance Regulation 1-2-14.

Bail Bond Producer Files – Disclosure Statement, Amount of Bail

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
7,815	686	642	99	15%

In 115 instances, the Company failed, through its agents, to include the amount of premium charged on the Disclosure Statement as such form is defined in Appendix C of Colorado Insurance Regulation 1-2-14.

Bail Bond Producer Files – Disclosure Statement, Amount of Premium Charged

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
7,815	686	642	115	18%

In 183 instances, the Company failed, through its agents, to include the court in which the bond is executed on the Disclosure Statement as such form is defined in Appendix C of Colorado Insurance Regulation 1-2-14.

Bail Bond Producer Files – Disclosure Statement, Court in which Bond is Executed

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
7,815	686	642	183	29%

In 173 instances, the Company failed, through its agents, to include the name of the indemnitor on the Disclosure Statement as such form is defined in Appendix C of Colorado Insurance Regulation 1-2-14.

Bail Bond Producer Files – Disclosure Statement, Name of Indemnitor

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
7,815	686	642	173	27%

In seventy-seven (77) instances, the Company failed, through its agents, to include the signature of the defendant or third party indemnitor on the Disclosure Statement as such form is defined in Appendix C of Colorado Insurance Regulation 1-2-14.

Bail Bond Producer Files – Disclosure Statement, Signature of Defendant or Third Party Indemnitor

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
7,815	686	642	77	12%

In 206 instances, the Company failed, through its agents, to include the signature of the bail bonding agent on the Disclosure Statement as such the form is defined in Appendix C of Colorado Insurance Regulation 1-2-14.

Bail Bond Producer Files – Disclosure Statement, Signature of Bail Bonding Agent

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
7,815	686	642	206	32%

Recommendation No. 15:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of § 12-7-108, C.R.S. and Colorado Insurance Regulation 1-2-14. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure that all required information is included on the Disclosure Statements as such form is defined in Appendix C of Colorado Insurance Regulation 1-2-14.

Issue G7: Failure, in some instances, to provide property owners with a written disclosure statement at the time of application of the lien against real property.

Section 16-4-104, C.R.S., Bail Bond – alternatives, states in part:

...

- (3)(a)(I) If the bond is to be secured by real estate, the bail bonding agent *shall provide the property owner with a written disclosure statement* in the following form at the time an initial application is filed: [Emphasis added.]

“Disclosure of lien against real property

Do not sign this document until you read and understand it! This bail bond will be secured by real property you own or in which you have an interest. Failure to pay the bail bond premium when due or the defendant’s failure to comply with the conditions of bail could result in the loss of your property!”

- (II) The disclosure required in subparagraph (I) of this paragraph (a) shall be printed in fourteen-point bond-faced type either:

...

- D. On a separate and specific document attached to or accompanying the application; or
- E. In a clear and conspicuous statement on the face of the application.

The examiners selected a random sample of 686 files from a total population of 7,815 powers-of-attorney executed by the Company’s bail bond agents to guarantee bail bonds posted during 2008. Of the 686 files reviewed, the bail bonding agents received real property as collateral in the execution of fifteen (15) of the thirty-six (36) bonds. One (1) file reviewed indicated that both real property and other than real property were used as collateral.

It appears that the Company and its agents are not in compliance with Colorado insurance law in that in eight (8) instances, the Company failed, through its agents, at the time of application to provide the property owner with a written disclosure of the lien against real property.

Bail Bond Producer Files – Real Property Received as Collateral, Written Disclosure of Lien

Population	Sample Size – Real Property Used as Collateral	Number of Exceptions	Total Error Rate
7,815	15	8	53%

Recommendation No. 16:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of § 16-4-104, C.R.S. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure that a written disclosure of the lien against real property is provided to all property owners at the time of application in connection with bonds that are secured by real property as required by Colorado insurance law.

Issue G8: Failure, in some instances, to include on all applications a permanently affixed statement regarding fraudulent acts and penalties. *(This appears to be a repeat of prior issue D in the findings of the market conduct examination report of 2002.)*

Section 10-1-128, C.R.S, Fraudulent insurance acts – immunity for furnishing information relating to suspected insurance fraud-legislative declaration, states in part:

...

- (6)(a) Each insurance company shall provide on all printed applications for insurance, or on all insurance policies, or on all claim forms provided and required by an insurance company, or required by law, whether printed or electronically transmitted, a statement, in conspicuous nature, permanently affixed to the application, insurance policy, or claim form substantially the same as the following:

“It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.”

The examiners selected a random sample of 686 files from a total population of 7,815 powers-of-attorney executed by the Company’s bail bond agents to guarantee bail bonds posted during 2008.

It appears that the Company and its agents are not in compliance with Colorado insurance law in that in 390 instances, the Company failed, through its agents, to include on the applications a permanently affixed statement regarding fraudulent acts and penalties.

Bail Bond Producer Files – Applications

Population	Sample Size	Number of Exceptions	Total Error Rate
7,815	686	390	57%

Based on review of the documentation in the files, it was determined that although the required fraud information was not included on 390 applications, a fraud statement appears to have been provided to consumers in some other manner in all but twelve (12) cases.

Recommendation No. 17:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of § 10-1-128, C.R.S. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure that all applications include the required verbiage regarding fraudulent acts and penalties as required by Colorado insurance law. In the market conduct examination for the period January 1, to December 31, 2002, the Company was cited for failure of agents to maintain and provide records to examiner. The violation resulted in Recommendation #12 of Final Agency Order O-04-057, stating that “The Respondent shall review, revise and implement procedures regarding monitoring the agents’ display of required fraud statements on all applications to ensure compliance with Colorado insurance law.” Failure to comply with the previous order of the commissioner may constitute a violation of § 10-1-205, C.R.S.

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**Market Conduct Examination
Summary of Issues and Recommendations**

Lexington National Insurance Corporation

Issue G8: Failure, in some instances, to include on all applications a permanently affixed statement regarding fraudulent acts and penalties. <i>(This appears to be a repeat of prior issue D in the findings of the market conduct examination report of 2002.)</i>	17	56
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Examination Report Submission

Independent Contract Market Conduct Examiners

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For

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